

**Before the
Federal Communications Commission
Washington, D.C. 20554**

DOCKET FILE COPY ORIGINAL

In the Matter of

San Francisco Unified School District

For Renewal of License for Station KALW(FM),
San Francisco, California

To: The Secretary

Attn: Chief Administrative Law Judge
Richard L. Sippel

) MB Docket No. 04-191
)
)
)
)
)
)

Facility ID No. 58830

File No. BRED-19970801YA

RECEIVED

OCT 14 2005

Federal Communications Commission
Office of the Secretary

**ENFORCEMENT BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

William D. Freedman, Deputy Chief
James W. Shook, Special Counsel
Dana E. Leavitt, Special Counsel
Investigations and Hearings Division
Enforcement Bureau

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420

October 14, 2005

No. of Copies rec'd 0+6
List A B C D E

Table of Contents

	Page
Summary	iii
I. Preliminary Statement	1
II. Proposed Findings of Fact	4
A. Overview	4
B. Background	4
C. Station KALW(FM)'s Public Inspection File and SFUSD's License Renewal Application Certification	7
D. The GGPR Petition to Deny the Renewal Application	17
E. SFUSD'S Opposition to the Petition to Deny	23
F. Mass Media Bureau Letter of Inquiry/SFUSD's Hiring of Ms. Sawaya	30
G. SFUSD'S Response to the LOI	34
H. Deposition Responses	50
III. Proposed Conclusions of Law	60
A. Overview	60
B. False Certification/Misrepresentation/Lack of Candor	60
1. False Certification	61
2. Additional Misrepresentations/Lack of Candor	67
C. False Deposition Testimony	77
D. Rule Violations/Forfeiture	81
E. Conclusion	81

Summary

The designated issues in this proceeding focus on whether the San Francisco Unified School District ("SFUSD"), licensee of noncommercial educational Station KALW(FM), San Francisco, California, falsely certified its 1997 renewal application by claiming that the station's public inspection file contained all documents required by the Commission's rules, and whether SFUSD made misrepresentations or lacked candor in thereafter defending that certification. In addition, the proceeding seeks to determine whether SFUSD provided meritorious service and whether it misrepresented facts or lacked candor during deposition testimony during discovery. In light of the foregoing, the Commission is to determine whether the captioned renewal application should be renewed and/or whether a forfeiture should be imposed against SFUSD for violating sections 73.1015, 73.3527 and/or 73.3613 of the Commission's rules.

The Bureau submits that the record evidence establishes that SFUSD falsely certified in the renewal application that Station KALW(FM)'s public inspection file had been properly maintained throughout the license term, and, through its agents, Jeffrey Ramirez, William Helgeson, Nicole Sawaya and others, repeatedly misrepresented facts or lacked candor in the course of defending that certification. In this regard, the evidence demonstrates that Mr. Ramirez, the station's General Manager at the time of the renewal application certification, knew that the station's public inspection file did not contain required documents and that he had not taken steps during his tenure to maintain the file. Mr. Ramirez also had no knowledge that his predecessor station general managers had maintained the file as required by the rules. In defending that certification after it was challenged in a petition to deny the renewal application, both Mr. Ramirez and Mr.

Helgeson, the station's long-time Operations Manager, falsely represented to the Commission that they had taken steps to maintain the file in accordance with the rules during Mr. Ramirez's tenure as General Manager.

Subsequently, in an April 2001 Declaration submitted in support of SFUSD's response to staff questions about the certification, Mr. Helgeson falsely swore, *inter alia*, that he had read the response and that all factual claims made therein were true. In fact, Mr. Helgeson did not read the response, and there were several significant claims in the response that were false. The record evidence shows that SFUSD's then-communications counsel, the Sanchez Law Firm, was still editing the response on the date Mr. Helgeson signed his sponsoring declaration. Consequently, he could not possibly have seen the response until well after its filing with the Commission. Moreover, SFUSD's claim that the file contained certain documents, in particular, documents detailing the station's programming obtained from National Public Radio, was knowingly false in that Mr. Helgeson had placed those very documents in the file only after the staff inquiry had been received. In addition, SFUSD's claim in the response that present management believed that the file contained certain classes of required documents on August 1, 1997, the date that SFUSD caused the renewal application to be filed with the Commission, was knowingly false, in that no one at SFUSD had confirmed in any respect whatsoever the basis for Mr. Ramirez's certification.

Finally, during her September 28, 2004 deposition in this proceeding, Ms. Sawaya falsely testified under oath that she had virtually no knowledge as to how SFUSD came to prepare its April 2001 response. In fact, she personally inspected the file shortly after she had become Station KALW(FM)'s General Manager in March 2001, and reported to

the Sanchez Law Firm about the file's shortcomings. Specifically, Ms. Sawaya reported that two required supplemental ownership reports had not been placed in the file until December 1997, more than two and four years, respectively, after such reports should have been placed in the file, and that issues/programs lists had not been placed in the file at the times due. Nonetheless, less than one month after Ms. Sawaya's report, SFUSD falsely claimed that the file contained required reports and lists.

Consequently, even though SFUSD did indeed provide meritorious service to its community, its license should not be renewed. By repeatedly lying to the Commission, SFUSD demonstrated that it cannot be trusted as a Commission licensee. SFUSD's failure to have maintained the station's public file and its repeated deceptions about its failure to do so warrant denial of its license renewal application for Station KALW(FM), in accordance with section 309(k) of the Communications Act.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	MB Docket No. 04-191
)	
San Francisco Unified School District)	
)	
For Renewal of License for Station KALW(FM),)	Facility ID No. 58830
San Francisco, California)	File No. BRED-19970801YA

To: The Secretary

Attn: Chief Administrative Law Judge
Richard L. Sippel

**ENFORCEMENT BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. PRELIMINARY STATEMENT

1. By *Hearing Designation Order and Notice of Apparent Liability for Forfeiture*,¹ the Commission commenced this proceeding to determine whether the above-captioned application filed by the San Francisco Unified School District ("SFUSD") for renewal of the license for noncommercial educational Station KALW(FM), San Francisco, California (the "Renewal Application"), should be granted.

2. At paragraph 24 of the *HDO*, the Commission specified the following issues for resolution at hearing:

1. To determine whether San Francisco Unified School District falsely certified its application with respect to the completeness of the KALW(FM) public inspection file and the effect thereof on its qualifications to be a Commission licensee.
2. To determine whether San Francisco Unified School District made misrepresentations of fact or was lacking in candor and/or violated Section 73.1015 of the Commission's Rules with regard to its certification in the subject license renewal application that it had placed in the KALW(FM)

¹ *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326 (2004) ("*HDO*").

public inspection file at the appropriate times the documentation required by Section 73.3527, and the effect thereof on its qualifications to be a Commission licensee.

3. To determine, in light of the evidence adduced pursuant to the specified issues, if the captioned application for renewal of license for station KALW(FM) should be granted.

3. In paragraph 25 of the *HDO*, the Commission ordered that, regardless of whether the hearing record warranted denial of the Renewal Application, the Presiding Administrative Law Judge (the "Presiding Judge") shall also determine, pursuant to section 503(b)(1) of the Communications Act of 1934, as amended, whether an Order of Forfeiture in an amount not to exceed \$300,000 should be issued against SFUSD for willful and/or repeated violations of sections 73.1015, 73.3527 and/or 73.3613 of the Commission's rules.

4. Paragraph 27 of the *HDO* made Golden Gate Public Radio ("GGPR"), the entity that filed the Petition to Deny ("Petition") the Renewal Application, a party to this proceeding.² Paragraph 29 of the *HDO* placed the burden of proceeding with respect to Issues 1 and 2 and the burden of proof as to all issues on SFUSD.

5. On October 8, 2004, the Presiding Judge ruled that SFUSD would be permitted to introduce evidence on meritorious service.³ He limited the scope of such evidence to the one year of programming that aired prior to the filing of the GGPR Petition

² By *Memorandum Opinion and Order*, FCC 04M-27 (rel. Oct. 1, 2004), the Presiding Judge dismissed GGPR as a party for failing to file a notice of appearance.

³ See *Memorandum Opinion and Order*, FCC 04M-31 (rel. Oct. 8, 2004). By *Memorandum Opinion and Order*, FCC 04M-37 (rel. Nov. 12, 2004), the Presiding Judge framed the added issue as follows:

To determine whether station KALW(FM) has provided meritorious service relevant to a renewal of SFUSD's license, and/or relevant to mitigating the amount of any forfeiture.

(November 3, 1996 to November 3, 1997), and to the one year of programming that aired prior to release of the *HDO* (July 16, 2003 to July 16, 2004).⁴ The Presiding Judge subsequently ruled that meritorious programming would be considered “only to argue ascertainment of community interests, and/or for considering reduction of forfeiture amounts.”⁵

6. After some discovery had been conducted in the proceeding, by *Memorandum Opinion and Order*,⁶ the Presiding Judge also added the following issue:

To determine whether San Francisco Unified School District through its agents made misrepresentations of fact and/or lacked candor before the Commission during, or in connection with, discovery testimony taken by the Enforcement Bureau on September 28, 2004.

7. The Presiding Judge conducted an evidentiary hearing on the issues designated in Washington, D.C. from June 6-10, 2005. Both SFUSD and the Bureau proffered witness testimony and documentary exhibits.⁷ Following the hearing, he received into evidence additional exhibits sponsored by SFUSD.⁸ The Presiding Judge established October 7, 2005 for the submission of proposed findings of fact and conclusions of law (“PFCs”).⁹

⁴ *Memorandum Opinion and Order*, FCC 04M-31, p. 6, ¶ 15.

⁵ *Order*, FCC 05M-42 (rel. Sept. 16, 2005).

⁶ FCC 05M-17 (rel. Apr. 1, 2005), *modified by Addendum*, FCC 05M-20 (rel. Apr. 5, 2005).

⁷ Hereafter, each of SFUSD’s exhibits will be referred to as (“SFUSD Ex. #”) and each of the Bureau’s exhibits will be referred to as (“EB Ex. #”). Hearing transcript pages will be referred to as (“Tr. #”).

⁸ *See Order*, FCC 05M-31 (rel. June 23, 2005).

⁹ *See Order*, FCC 05M-39 (rel. Aug. 23, 2005). Previously, PFCs were due September 16, 2005. *See Order*, FCC 05M-29 (rel. June 14, 2005).

II. PROPOSED FINDINGS OF FACT

A. OVERVIEW

8. The *HDO* assigned the burden of proof to SFUSD on the issues designated therein. Accordingly, SFUSD must establish by a preponderance of the evidence that its Renewal Application certification was not intentionally false regarding the following: (1) that its public inspection file for Station KALW(FM) contained all documentation required by the Commission's rules; and (2) that such documentation was placed in the file at the times specified by the rules. The record evidence demonstrates that SFUSD failed to meet this burden. Likewise, SFUSD is required to show that its subsequent representations about the completeness of its public file, made in its responses to the Petition and to a Mass Media Bureau letter of inquiry, were not intentionally false. Once again, the record evidence shows that SFUSD failed to meet this burden, as it repeatedly failed to tell the truth. Finally, with respect to the added issue about the truthfulness of SFUSD witness deposition testimony – an issue for which the Bureau has the burden of proof – the record evidence again establishes that SFUSD did not respond completely and honestly to discovery questions regarding its representations about Station KALW(FM)'s public inspection file. Consequently, SFUSD has failed to meet one of the two primary standards that the Commission uses to judge a broadcast licensee's character. Thus, notwithstanding Station KALW(FM)'s record of service to its listeners, denial of SFUSD's Renewal Application is warranted.

B. BACKGROUND¹⁰

9. SFUSD has been the licensee of Station KALW(FM) since the station's

¹⁰ To provide context, we herein set forth a detailed chronological statement of the facts.

inception in 1941.¹¹ SFUSD received its most recent license renewal for Station KALW(FM) on December 31, 1990.¹²

10. Station KALW(FM) currently provides, and has provided during its most recent license term, a noncommercial educational service to the residents of San Francisco and its nearby communities. This service includes locally-produced programs, as well as programs obtained from National Public Radio and Public Radio International.¹³ The Bureau agrees with SFUSD that Station KALW(FM) has provided meritorious service during the relevant time periods established by the Presiding Judge by broadcasting programming that is responsive to community needs, interests and concerns.¹⁴

11. Currently, Station KALW(FM) does not receive, and since the early 1990s has not received, direct financial support from SFUSD. SFUSD's support of Station KALW(FM) is limited to the provision of in-kind services, such as the location of the station's offices and studios, as well as janitorial and administrative assistance.¹⁵ Consequently, Station KALW(FM) must obtain all of its operating funds from donations provided by its listeners, grants from the Corporation for Public Broadcasting, and support from station underwriters.¹⁶ During the fiscal year that ended June 30, 2004,

¹¹ Official Notice Requested. *See also* SFUSD Ex. 22, p. 19.

¹² Official Notice Requested.

¹³ SFUSD Ex. T-6, p. 2.

¹⁴ *See* Stipulations, filed August 31, 2005.

¹⁵ SFUSD Ex. 22, p. 19. *See also* EB Ex. 44, p. 221.

¹⁶ SFUSD Ex. 15 (dep. pp. 205-13); SFUSD Ex. 18 (dep. pp. 403-07).

Station KALW(FM) received approximately \$1.3 million for its operations, more than \$1 million of which came from listener donations.¹⁷

12. SFUSD is governed by an elected school board, known as the Board of Education ("BOE"), which is comprised of seven members elected at large to each serve four-year terms.¹⁸ Either three or four members of the BOE stand for election in November of even-numbered years.¹⁹ A Superintendent of Schools, hired by the BOE, has overall responsibility for SFUSD's operations, including that of Station KALW(FM).²⁰ During the most recent license term, the Superintendent has generally delegated authority to oversee administrative aspects of Station KALW(FM)'s operations to one or more special assistants or consultants.²¹

13. Throughout the current license term, SFUSD has employed a General Manager (also referred to as Station Manager) who has been responsible for day-to-day management of Station KALW(FM). The following individuals have served as General Manager of Station KALW(FM) since the station's last renewal of license: Margaret

¹⁷ SFUSD Ex. 78-C, p. 6.

¹⁸ SFUSD Ex. T-4, p. 2. The following persons have served or currently serve as Superintendents since the station's license was last renewed: Arlene Ackerman (August 2000 – present), Linda Davis (June 1999 – August 2000), Waldemar Rojas (1992 – 1999), and Ramon C. Cortines (July 1986 – July 1992). EB Ex. 40, p. 6.

¹⁹ Tr. 650.

²⁰ SFUSD Ex. T-4, p. 2.

²¹ The following persons have served or currently serve as special assistants to the Superintendent: Myong Leigh and Lorna Ho (September 2004 – present and May 2003 – present, respectively), Jackie Wright (January 2001 – May 2003), Akur Varadarajan (Spring 2000 – December 2000), Glenston Thompson (Early 2000 – Spring 2000), Bob Harrington (June 1999 – End of 1999), Ruben Bohuchot (January 1998 – June 1999), Enrique Palacios (Summer 1992 – January 1998), and Linda Davis (pre-1991 – summer 1992). EB Ex. 40, p. 5.

Ann (Nicole) Sawaya (March 1, 2001 – present), William Helgeson (October 2000 – February 28, 2001 and January 1998 – mid-1998), Michael Johnson (mid-1998 – September 2000), Jeffrey Ramirez (August 5, 1996 – January 31, 1998), Rose Levinson (June 1995 – August 1996), Jerry Jacob (mid-1992 – June 1995), and Daniel del Solar (1988 – mid-1992).²² In addition to serving twice as the station's General Manager, Mr. Helgeson has also functioned as Station KALW(FM)'s Operations Manager since the fall of 1992.²³

C. STATION KALW(FM)'S PUBLIC INSPECTION FILE AND SFUSD'S LICENSE RENEWAL APPLICATION CERTIFICATION

14. The station's General Manager has traditionally had primary responsibility for updating and maintaining the station's public inspection file ("PIF").²⁴ One aspect of that responsibility was the updating of the licensee's ownership information.²⁵ In the case of SFUSD, this required placement of supplemental ownership reports in the PIF following all elections that resulted in a change in the makeup of the BOE.²⁶ An

²² *Id.*, pp. 4-5. See also SFUSD Ex. T-1, p. 1; SFUSD Ex. T-2, p. 4; SFUSD Ex. T-3, p. 1; EB Ex. 5, p. 117 (Jacob/Levinson); EB Ex. 44, pp. 23, 70, 80 (del Solar), 89, 109, 123, 139, 153, 169, 182, 195, 208, 222 (Jacob), 235, 248, 259, 270, 282 (Levinson), 293, 303, 315 (Ramirez).

²³ EB Ex. 44, pp. 89, 109, 123, 139, 153, 169, 182, 195, 208, 222, 235, 248, 259, 270, 282, 293, 303, 315; SFUSD Ex. T-2, p. 4.

²⁴ Tr. 368, 808. See also SFUSD Ex. T-2, p. 6; EB Ex. 5, p. 117 (General Manager's duties include, *inter alia*, "Oversee compliance requirements with local, state and federal agencies.").

²⁵ See 47 C.F.R. §§ 73.3527(c), 73.3615(e), (f), (g) (1996) (EB Ex. 59). Current requirements differ slightly. See 47 C.F.R. §§ 73.3527(e)(4), 73.3615(d), (f), (g) (2004).

²⁶ *Id.* BOE elections occurred in November 1992, 1994 and 1996, respectively, with new Board members taking office no later than January 1993, 1995 and 1997, respectively. EB Ex. 40, pp. 6, 10; EB Ex. 38, pp. 22-24, 29-31.

additional aspect of that responsibility included placement of issues/programs lists in the PIF on a quarterly basis, by the 10th day of the month subsequent to the end of each calendar quarter.²⁷

15. As noted above, Jeffrey Ramirez became Station KALW(FM)'s General Manager on August 5, 1996.²⁸ For the first several months of his tenure, Mr. Ramirez's principal focus was on an impending station move, which eventually occurred in December 1996.²⁹ In addition, Mr. Ramirez devoted a significant amount of attention to programming and funding issues, which ultimately resulted in some program changes, addition of weather and traffic reports, and implementation of a new underwriting program.³⁰

16. During the course of overseeing the station's impending move, Mr. Ramirez often met with the station's Chief Engineer, Dave Evans. During one of those meetings, Mr. Evans mentioned the PIF.³¹ In an Affidavit dated October 28, 1997,³² Mr. Evans represented:

[i]n the last week of August 1996, I had a meeting with Station Manager Jeff Ramirez to discuss problems that I thought needed his attention. I told Mr.

²⁷ See 47 C.F.R. § 73.3527(a)(7) (1996) (EB Ex. 59, pp. 2-3).

²⁸ SFUSD Ex. T-1, p. 1.

²⁹ *Id.*, p. 4; Tr. 669. In this regard, Station KALW(FM) had been operating from a series of temporary locations following a 1989 earthquake that basically destroyed the high school that had housed the station's studios and offices. See SFUSD Ex. T-2, p. 5.

³⁰ SFUSD Ex. T-1, pp. 4-7.

³¹ *Id.*, p. 11.

³² EB Ex. 5, pp. 42-43. Mr. Evans' Affidavit, as well as those provided by Susen Hecht and Jason Lopez (discussed in greater detail, *infra*), were submitted in support of the GGPR Petition, which sought denial of SFUSD's Renewal Application.

Ramirez the public inspection file was a mess and it needed his immediate attention. Among many other items, I told Mr. Ramirez that Ownership Reports and quarterly issues reports hadn't been filed, and that the EEO program was out of date.³³

Although Mr. Ramirez's recollection of that conversation, as set forth in a January 1998 Declaration, was only "vague and general," he acknowledged meeting with Mr. Evans "at some time in August 1996 with respect to the public inspection file."³⁴ According to Mr. Ramirez, Mr. Evans was not specific as to how the PIF was deficient and he (Mr. Ramirez) claimed that the conversation was confusing to him.³⁵ At the hearing and in his deposition, Mr. Ramirez acknowledged that he took no action with respect to the PIF as a result of his above-described conversation with Mr. Evans.³⁶

17. At the hearing, Mr. Ramirez testified that, in the spring of 1997, he received a postcard from the Commission advising him of the station's obligation to file a renewal application.³⁷ According to slip listings (hereafter referred to as billing records) provided by the Sanchez Law Firm, Mr. Ramirez called the firm and spoke on May 8, 1997 with its name principal attorney, Ernest T. Sanchez, about license renewal procedures.³⁸

³³ *Id.*, p. 42. Mr. Evans passed away in January 1998 as a result of his having been struck by an automobile in November 1997. Tr. 727; EB Ex. 4, p. 6.

³⁴ SFUSD Ex. 4, p. 49.

³⁵ *Id.*

³⁶ Tr. 352; SFUSD Ex. 1, p. 64-5.

³⁷ Tr. 522.

³⁸ *Id.*; EB Ex. 7, p. 1 (Entry 2309, 5/8/1997). During all times relevant to this proceeding, the Sanchez Law Firm has consisted of two attorneys, Mr. Sanchez and his wife, Susan M. Jenkins. The Sanchez Law Firm served as communications counsel for SFUSD, beginning in the 1980s and continuing until its withdrawal as counsel in this proceeding in September 2004. *See* SFUSD Ex. 22, pp. 2, 43; Official Notice requested as to the withdrawal of the Sanchez Law Firm as counsel for SFUSD.

Commission records reflect that, on May 15, 1997, the Commission mailed a renewal application packet to SFUSD (the "Renewal Application Materials").³⁹

18. In his written testimony, Mr. Ramirez acknowledged that he did not turn his attention to the PIF until after Station KALW(FM) had received the Renewal Application Materials from the Commission. Among other things, Mr. Ramirez related that he looked at the PIF and found that it was "extremely disorganized." He thereafter solicited the assistance of one of the station volunteers, Susen Hecht.⁴⁰ According to Mr. Ramirez, he expected her to examine the file and put everything in order so that he could review it more efficiently.⁴¹ In a January 1998 Declaration, however, Mr. Ramirez represented that he "assigned Ms. Hecht the task of reviewing the file."⁴² At the hearing, he conceded that he did not remember specifically what he had asked Ms. Hecht to do.⁴³

19. In an Affidavit dated October 28, 1997,⁴⁴ Ms. Hecht stated that she had been a volunteer at Station KALW(FM) for four years, coming to the station on Tuesday afternoons to assist with general office work. She further related:

³⁹ EB Ex. 1. Such a packet typically consisted of a blank renewal application and related instructions, an ownership report form (FCC Form 323-E for noncommercial educational stations) and related instructions, and a broadcast EEO program report (FCC Form 396) and related instructions.

⁴⁰ SFUSD Ex. T-1, p. 12. Susen Hecht served as a volunteer at Station KALW(FM) from, at least, the fall of 1994, usually performing general office work. *See* EB Ex. 44, pp. 195, 208, 222, 235, 248, 259, 270, 282, 293, 303, 315; Tr. 381, 720. Her current whereabouts are unknown. Tr. 722; EB Ex. 4, p. 5.

⁴¹ SFUSD Ex. T-1, p. 12.

⁴² SFUSD Ex. 4, p. 50.

⁴³ Tr. 372-74.

⁴⁴ EB Ex. 5, pp. 44-49.

[i]n June 1997, Station Manager Jeff Ramirez asked me to review the public inspection files for license renewal purposes, which I did. I found the files disorganized and incomplete. I itemized the contents of the files and gave Mr. Ramirez written confirmation titled *License Renewals Materials – In Files at Present* in June 1997.⁴⁵ (italics in original)

Ms. Hecht's report, which itemized the content of the PIF, was attached to her Affidavit.⁴⁶

20. Ms. Hecht's four-page report has two sub-headings: Name and Contents (underline in original). Under Name, the first designation is Ownership Reports. The related material under Contents states: "Ownership Reports for non-commercial educational broadcast stations for the following dates: 1/31/01; 11/90; 3/3/89; 9/16/88; 7/28/88; 7/5/83."⁴⁷ On the report's third page, under the heading FILE NAME appears "PROBLEMS & PROGRAMS Spring 1992." On the corresponding lines under CONTENTS appears "Incomplete 1992 (Winter and Spring ONLY) Complete 1991; partials for 97-89."⁴⁸

21. SFUSD acknowledges that Mr. Ramirez received and read Ms. Hecht's report.⁴⁹ In his January 1998 declaration, Mr. Ramirez stated that he did not consider Ms. Hecht's list accurate, so he made no further use of it.⁵⁰ In his direct written testimony, he asserted that Ms. Hecht:

⁴⁵ EB Ex. 5, p. 44.

⁴⁶ *Id.*, pp. 46-49.

⁴⁷ *Id.*, p. 46.

⁴⁸ *Id.*, p. 48. The record evidence provides no information as to what Ms. Hecht may have been referring to with respect to her report's terminology "partials for 97-89."

⁴⁹ EB Ex. 38, p. 5.

⁵⁰ SFUSD Ex. 4, p. 50.

did not do what I asked her to do, and this certainly influenced my overall evaluation of her work. I thought she was going to organize the files, or bring them to my office, or do something to facilitate my review. Instead, after some time Susen Hecht gave me a document that did not look like professional, reliable work. I recall scanning Susen Hecht's work and thinking that it was difficult to review and poorly organized.... I never read Susen Hecht's document closely, nor gave it much consideration at all.... Instead, I conducted and relied upon my own review of the PIF.⁵¹

At the hearing, Mr. Ramirez testified that, by the time he had received Ms. Hecht's report, he had already started looking at the PIF himself, and, because the report was not what he expected from Ms. Hecht, he really did not look at it closely.⁵²

22. Mr. Ramirez repeatedly acknowledged that he did not begin his review of the PIF until May or June of 1997, after the station had received the Renewal Application Materials from the Commission and he had read the renewal application question that related to the public file.⁵³ That question (Section III, Question 2) read as follows:

Has the applicant placed in its public inspection file at the appropriate times the documentation required by Section 73.3526 and 73.3527?

If No, attach as an Exhibit a complete statement of explanation.⁵⁴

At that point, according to Mr. Ramirez, he read the applicable Commission rule (47 C.F.R. § 73.3527).⁵⁵ With respect to issues/programs lists, section 73.3527 of the Commission's rules specified, in pertinent part, that a licensee such as SFUSD place in its PIF

⁵¹ SFUSD Ex. T-1, pp. 12-13.

⁵² Tr. 376-77.

⁵³ SFUSD Ex. 1, pp. 32-33 (dep. pp. 31-32); SFUSD Ex. T-1, p. 12; Tr. 385.

⁵⁴ SFUSD Ex. 5, p. 4 (FCC 303-S, Application for Renewal of License for AM, FM, TV, Translator or LPTV Station, p. 3 (June 1995)).

⁵⁵ SFUSD Ex. 1, p. 36 (dep. p. 35); SFUSD Ex. T-1, p. 13.

every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three-month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter....⁵⁶

At the hearing, Mr. Ramirez testified that he missed the detail that "the reports had to be there in the file on a quarterly basis by a certain date."⁵⁷ In addition, then-section 73.3615 of the Commission's rules required that licensees place in their public inspection files "[a] copy of all ownership and supplemental ownership reports ... filed pursuant to this section...."⁵⁸ In the case of supplemental ownership reports for SFUSD, such filings were required within 30 days of any changes to the BOE.⁵⁹

23. Mr. Ramirez testified that he thought that he reviewed the license renewal application form's instructions before he completed the Renewal Application, and acknowledged that he understood from his review of the PIF that required documents were missing from the PIF.⁶⁰ The instructions for responding to Section III, Question 2 of the renewal application form advised the licensee of its obligation to maintain a PIF and that the licensee should refer to section 73.3527 for a complete listing of the required documents and their mandatory retention periods. The instruction also informed a licensee that:

⁵⁶ 47 C.F.R. § 73.3527(a)(7) (1996) (EB Ex. 59, p. 2).

⁵⁷ Tr. 390. See also SFUSD Ex. 1, pp. 48-49 (dep. pp. 47-48).

⁵⁸ 47 C.F.R. § 73.3615(g) (1996) (EB Ex. 59, p. 6).

⁵⁹ *Id.*, subsection (f).

⁶⁰ Tr. 246, 389. At the same time, however, Mr. Ramirez did not remember whether the application came with a set of instructions. When shown the instructions, he testified that they did not look familiar to him and he did not recall whether he reviewed the instructions when he filled out the Renewal Application. Tr. 350-51.

Applicants who have not so maintained their file should provide an exhibit identifying the items that are missing/late filed, and identifying steps taken to reconstruct missing information, and to prevent such problems in the future.⁶¹

24. In determining how to respond to the renewal application form's questions, Mr. Ramirez testified that he also referred to various prepared guidelines, including a counsel memo from the National Association of Broadcasters ("NAB").⁶² In pertinent part, the NAB counsel memo noted that issues/programs lists were to be retained by licensees for eight years, that they were to be placed in the PIF file by January 10, April 10, July 10 and October 10 of each year, and that each list should include the issues examined, the time, date and length of the program, the program title, the type of program, and the guests on the program.⁶³

25. Mr. Ramirez testified that he also sought advice from Mr. Sanchez as to how to answer the renewal application form's question about the PIF, although Mr. Ramirez cannot now recall what he asked Mr. Sanchez.⁶⁴ Mr. Ramirez also did not recall whether he told Mr. Sanchez what was in the station's PIF, what he planned to put in the PIF or whether issues/programs lists had or had not previously been placed in the PIF.⁶⁵ Billing records from the Sanchez Law Firm reflect that Mr. Sanchez had several conversations with Mr. Ramirez between the latter's receipt of the Renewal Application Materials and the filing of the Renewal Application. Specifically, on June 30, 1997, the billing records

⁶¹ EB Ex. 58, pp. 4-5 (Instructions for FCC 303-S).

⁶² SFUSD Ex. T-1, p. 13.

⁶³ EB Ex. 11A, pp. 2, 4.

⁶⁴ SFUSD Ex. T-1, p. 13. *See also* Tr. 362-64.

⁶⁵ Tr. 403-04.

reflect a charge for .75 hours for a "Conference with Mr. Ramirez re license renewal questions and need to followup [sic] with Mr. Barmore, review SCA agreement."⁶⁶

Subsequent billing records reflect one further conversation with Mr. Ramirez on an unknown subject on July 7, 1997 for .50 hours and one on July 10, 1997 that concerned "SCA contract revisions."⁶⁷

26. In his written testimony, Mr. Ramirez represented that he recalled having asked various producers to put together lists of programs that demonstrated Station KALW(FM)'s programming treatment of community issues. However, the only person with whom Mr. Ramirez could recall "precisely" speaking was John Covell, who was a producer of the Station KALW(FM) program, *City Visions*.⁶⁸ Mr. Covell testified that he created a seven-page document in July 1997, which covered a period from July 1992 (when the program began airing on Station KALW(FM)) to July 7, 1997, that listed for each program a date, the initials of that program's producer, and the topic discussed. According to Mr. Covell, no one instructed him as to how to format the list, no one asked

⁶⁶ EB Ex. 7, p. 1 (Entry 1943, 6/30/1997). According to Mr. Ramirez, Mr. Barmore was an SFUSD attorney whom he consulted in connection with the Renewal Application certification about discrimination. Also, Mr. Ramirez acknowledged that the SCA contract had nothing to do with the Renewal Application. Tr. 401-02.

⁶⁷ EB Ex. 7, p. 2 (Entry 2310, 7/7/1997 and Entry 1956, 7/10/1997).

⁶⁸ SFUSD Ex. T-1, p. 14. Review of the testimony of various program producers or hosts, one of which was former Station KALW(FM) General Manager Rose Levinson, reveals no information about their having prepared an issues list for placement in the Station KALW(FM) PIF prior to August 1, 1997. See, e.g., SFUSD Ex. 52, 53, 54. In connection with the program, *Your Legal Rights*, program host Chuck Finney prepared and delivered on a weekly basis to Mr. Helgeson's in-box or desk a program sheet that included the topic, guest or guests, the program funders, and information as to how the public could obtain free legal pamphlets prepared by some of the funders. Mr. Finney also prepared yearly summaries. However, he does not recall preparing quarterly lists for *Your Legal Rights* until September or October 2004. EB Ex. 2, pp. 1-2 and Attachments 1 and 3.

him to change it subsequent to his sending it to the station, and no one had previously asked him to create such a list.⁶⁹ At the hearing, Mr. Ramirez acknowledged that he had never asked former station General Manager Rose Levinson to prepare material relative to *City Visions* for inclusion in the PIF.⁷⁰

27. On or about July 30, 1997, apparently after having received Mr. Sanchez's approval to do so,⁷¹ Mr. Ramirez forwarded the completed Renewal Application to his superiors at SFUSD. The Renewal Application reflects that a person whose initials are "LD" certified it by signing the name of the then-superintendent, Mr. Rojas, on July 30.⁷² Among other things, the Renewal Application certifies that "the applicant placed in its public inspection file at the appropriate times the documentation required by 47 C.F.R. Section ... 73.3527."⁷³ SFUSD acknowledges that Mr. Ramirez intended to so certify.⁷⁴ Mr. Ramirez mailed the Renewal Application directly to the Commission on July 30, and it was stamped as filed at the Commission on August 1.⁷⁵

28. In his written testimony, Mr. Ramirez acknowledged that the PIF did not contain required issues/programs lists or supplemental ownership reports then required by the Commission's rules. Mr. Ramirez conceded that SFUSD should have answered

⁶⁹ EB Ex. 3, pp. 1-2 and Attachment 1.

⁷⁰ Tr. 303.

⁷¹ See EB Ex. 7, p. 2 (Entry 1964, 7/30/1997, "Review final renewal application").

⁷² SFUSD Ex. 5, p. 5.

⁷³ *Id.*, p. 4.

⁷⁴ EB Ex. 38, p. 4.

⁷⁵ SFUSD Ex. 5, p. 1.

Section III, Question 2 of the renewal application form in the negative and provided an explanation as to what was missing from the PIF.⁷⁶ At his deposition, Mr. Ramirez related that he did not come to understand his error in answering Question 2 until after he had left SFUSD's employ. Mr. Ramirez also testified that he never shared that realization with anyone.⁷⁷

D. THE GGPR PETITION TO DENY THE RENEWAL APPLICATION

29. GGPR was formed on March 13, 1997 by Jason Lopez, Mel Baker and Dave Evans and formally incorporated on May 21, 1997.⁷⁸ On July 18, 1997, Mr. Evans withdrew as a member of GGPR; his place was taken by Deirdre Kennedy.⁷⁹ Throughout 1997, Messrs. Lopez, Baker and Evans and Ms. Kennedy were employees of SFUSD, each working at Station KALW(FM) on either a full-time, part-time or as-needed basis.⁸⁰ According to its Articles of Incorporation, GGPR was formed as a non-profit corporation for the production, promotion and broadcast of public radio programs.⁸¹

30. As discussed earlier, Mr. Evans was Station KALW(FM)'s long-time Chief Engineer. Mr. Lopez and Ms. Kennedy had worked on a part-time basis at the station as announcers since 1993;⁸² Mr. Baker apparently began working at the station in early

⁷⁶ SFUSD Ex. T-1, p. 15. *See also* SFUSD Ex. 1, p. 50 (dep. p. 49).

⁷⁷ SFUSD Ex. 1, pp. 57-59, 87-88 (dep. pp. 56-58, 86-87).

⁷⁸ SFUSD Ex. 22, p. 35; EB Ex. 4, p. 2.

⁷⁹ *Id.*, p. 37.

⁸⁰ *See* SFUSD Ex. 4, p. 48; SFUSD Ex. 22, pp. 42, 49, 86, 92.

⁸¹ SFUSD Ex. 22, p. 35.

⁸² EB Ex. 4, p. 1; EB Ex. 44, pp. 123, 139.

1996.⁸³

31. At some point between its formation and Mr. Evans's withdrawal as a member, GGPR proposed to SFUSD that SFUSD transfer the governance of Station KALW(FM) to GGPR.⁸⁴ The proposal specified that, before any such transfer would occur, GGPR would expand its membership to include a sufficient number of persons appointed by SFUSD so that SFUSD would be deemed to have retained control of Station KALW(FM). In addition, the proposal called for GGPR's original members to resign.⁸⁵

32. On July 28, 1997, Mr. Lopez reviewed Station KALW(FM)'s PIF, looking at every document contained therein. He did not find any Station KALW(FM) Program Guides or any lists that were based on NPR programming. In the PIF's "issues" folder, he found a list marked "7-23," consisting of pages 5, 6 and 7 of a list for an unidentified program which he believed to be *City Visions*. After photocopying this three-page list, he returned the material to the PIF. He did not find pages 1 through 4 of the list in the PIF or any other reports dated later than June 1992. In addition, Mr. Lopez did not find copies of any supplemental ownership reports relating to changes in the composition of the BOE following the 1992 and 1994 elections.⁸⁶

⁸³ *Id.*, p. 270.

⁸⁴ SFUSD Ex. 22, p. 37.

⁸⁵ *Id.*, pp. 39-40; EB Ex. 4, pp. 2-3. GGPR apparently designed its proposal to comport with a recommendation made in a 1996 report prepared by a Task Force that SFUSD had formed to focus on Station KALW(FM)'s mission, governance and financing. *See* SFUSD Ex. 22, p. 17; EB Ex. 44, p. 281. The Task Force had recommended that SFUSD retain the license of Station KALW(FM) but transfer governance to a board of directors of a nonprofit entity created by the BOE, 51 percent of whose members were to be appointed by the BOE. *See* SFUSD Ex. 22, pp. 18, 21, 24-26.

⁸⁶ EB Ex. 4, p. 3.

33. During meetings with various BOE members in August or September 1997, GGPR members Lopez and Baker pressed – without success – GGPR’s proposal to transfer to it governance of Station KALW(FM) and advised that there were shortcomings in the station’s management.⁸⁷ In addition, GGPR, through counsel, forwarded its governance proposal to Mr. Sanchez and, subsequently, sent him a list of reasons that GGPR believed would ultimately form the basis for a petition to deny the Renewal Application. In its October 1, 1997 letter, GGPR, through its attorney Jeffrey A. Berchenko, advised Mr. Sanchez:

The non-response to my clients’ proposal has caused them to prepare a list of reasons that they believe form the basis for a petition to deny KALW’s license renewal. A copy of this list is enclosed. As we discussed, the list would become the core of a petition to deny the station’s license renewal....

...If good faith substantive negotiations aimed at a transfer of management of the station are not underway by [October 10, 1997], the negotiations will cease and work on the petition will begin.⁸⁸

34. On October 1, 1997, Mr. Berchenko sent by facsimile to the Sanchez Law Firm a seven-page transmittal, which included a document entitled, “Basis for a Petition to Deny KALW’s License Renewal” (“Petitioner Memo”). The Petitioner Memo contained 28 numbered points, separated according to subject matter, beginning with “Fraudulent Statements re KALW’s License Renewal Application.” That portion of the

⁸⁷ *Id.*, pp. 3-4. See also EB Ex. 5, p. 137 (KALW Issues 9/97)

⁸⁸ SFUSD Ex. 22, pp. 39-40. Documentary evidence supports the letter’s assertion that discussions had previously occurred. See EB Ex. 7, p. 2, regarding work for which Mr. Sanchez billed SFUSD (Entry 2311, 9/15/1997, “Conference with counsel for Golden Gate Public Radio re preparation of Petition to Deny” and Entry 2067, 9/16/1997, “Call to Mr. Ramirez and Mr. Palacios re Golden Gate Public Radio”). But see SFUSD Ex. T-1, p. 16 (“I do not recall ever hearing of GGPR prior to reviewing the October 1, 1997 letter to Ernie Sanchez from Berchenko & Korn, attorneys for GGPR (Berchenko Letter).”)

document focused on "Page 3 Questions" including "1(b) – Have [sic] the applicant's Ownership Report as required by 73.3615 been filed with the Commission? - checked Yes." One bullet followed:

Supplemental Ownership Reports (323-E), since January 1991, are not in the station's public file and may not have been filed with the commission. The membership of the Board of Education has changed frequently since that time.

The next portion read: "2 – Has the applicant placed in its public inspection file at the appropriate times the documentation required by 73.3527 – checked YES." Two bullets followed, the first of which read:

Quarterly ... [not clearly readable] after 9/91. A simple list of issues, from 6/5/95 to 7/7/97, was placed in the file in late July for the purposes of license renewal.⁸⁹

35. On October 2, 1997, the Sanchez Law Firm sent by facsimile the Petitioner Memo to Mr. Ramirez and Mr. Palacios.⁹⁰ Billing records from the Sanchez Law Firm indicate that Mr. Sanchez and Mr. Ramirez discussed the Petitioner Memo on October 2 and 3, 1997.⁹¹ Mr. Ramirez then sent by facsimile a two-page document to Mr. Sanchez on October 4, 1997. According to the document sent by Mr. Ramirez, he:

subjected the list of 'basis to deny' to the three-pronged test you suggested. Is it right? Is it required? Does it matter? In regard to FCC public file requirements I referred to the guidelines contained in the NPR station manager's handbook, which were more concise than the guidelines I had previously referred to in the Broadcasting and Cable Yearbook. Here are the initial results.⁹²

⁸⁹ SFUSD Ex. 6, pp. 3-6; SFUSD Ex. T-1, p. 16.

⁹⁰ SFUSD Ex. 6, pp. 3-6; EB Ex. 7, p. 2 (Entry 2115, 10/2/97, "Conference with Mr. Ramirez re letter; fax to Mr. Palacios and Mr. Ramirez.")

⁹¹ EB Ex. 7, p. 2 (Entry 2115, 10/2/97, "Conference with Mr. Ramirez re letter; fax to Mr. Palacios and Mr. Ramirez.") *See also id.* (Entry 2118, 10/3/1997, "Conference with Mr. Ramirez re meeting to discuss Golden Gate matter").

⁹² SFUSD Ex. 6, p. 1; SFUSD Ex. T-1, p. 17.